IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1103 of 1985
With
CROSS OBJECTION (STAMP) No.1725 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
KAVERIBEN TIMMPA NAYAK,DECD. THROUGH R.NOS.2 TO 7 AS HEIRS. & 7 - Defendant(s)

==========

Appearance :
MR MD PANDYA for Appellant(s) : 1,
MS PAURAMI B SHETH for Defendant(s) : 1 - 7, 7.2.1, 7.2.2, 7.2.3,7.2.4
- for Defendant(s) : 0.0.0

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 10/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

1. This appeal by the Gujarat State Road Transport Corporation is directed against the judgment and award dated 31/7/1984 of the Motor Accident Claim Tribunal (Main), Surat in MACP No.632 of 1982 by which the Tribunal held the driver of the bus belonging to the S.T. Corporation guilty of negligent driving and directed the bus driver and the S.T. Corporation to pay the amount of Rs.3,71,800/- with six percent running interest from the date of application till realization and proportionate costs. Original claimants have filed cross objections for enhancement of the amount by another Rs.4,00,000/-.

2. On 16/11/1982, the bus belonging to the appellant

corporation was being driven by respondent no.8 herein (original opponent no.1) from Varachha road in Surat. When the bus was near Varachha road at about 4:45 p.m., an accident took place between the bus and the motor cycle being driven by Krishna. Krishna sustained serious injury and succumbed to the same. The widow, parents and four minor children of the deceased filed Motor Accident Claim Petition claiming compensation in the sum of Rs.10,00,000/- from the driver of the bus and the S.T. Corporation. The Tribunal held the driver of the bus to be entirely responsible for the accident after considering the evidence on record of the claim petition and also after considering the fact that the driver of the bus was convicted by the criminal court and sentenced to imprisonment but was granted the benefit of Probation of Offenders Act. On the question of compensation, the Tribunal held that the deceased was running an auto-mobile garage and was earning atleast Rs.1,000/- from the said garage after deducting all expenses, salary of the staff, cost of material etc. and all other running expenses. The Tribunal also held that the deceased owned two trucks and was doing the

business of giving those trucks on hire. At the relevant time the deceased had given those trucks on hire for carting milk cans of Sumul Dairy. From that business, the deceased was getting atleast Rs.1,500/- per month as hire charges from two trucks after deducting all expenses and thus, the deceased was having an income of Rs.2,500/- per month as the total monthly income. The Tribunal further assessed all the expenses of the deceased in the family of eight members at Rs.600/- per month and the dependency benefit of Rs.1,900/- per month i.e. Rs.22,800/- per annum. Since the age of the deceased was 36 years, the multiplier of 16 was applied and accordingly the compensation for loss of dependency benefit to the heirs was awarded at Rs.3,64,800/-. Adding thereto the amount for loss to the estate being the compensation for pain, shock and suffering at Rs.6,000/- and the funeral expenses at Rs.1,000/-, the Tribunal made a total award of Rs.3,71,800/-. It is the aforesaid judgment and award that the S.T. Corporation has challenged in appeal. The heirs of the claimant have filed cross objections.

3. Ms.Maya Desai, learned advocate for the appellant corporation has challenged the findings given by the Tribunal both on the question of negligence and also on the question of quantum of compensation. It is submitted by Ms.Desai, learned advocate that the bus was being driven at a moderate speed because there was a speed breaker bump and it was the deceased riding the motor cycle who dashed into the bus and therefore, the deceased was responsible for the accident in question.

4. We have carefully gone through the judgment under appeal and the evidence on record. The Panchnama shows that the bus was found on the wrong side of the road and the motor cycle was on the correct side of the road. The defence of the bus driver was that the motor cycle was being driven by the deceased at an excessive speed and when it reached the bump, the motor cycle jumped and it moved towards the bus and dashed with the front right portion of the bus. The Tribunal did not accept the said defence and held that if it was so, the bus would not have been found on the wrong side of the road.

5. The Panchnama, Exh.52 corroborates the case of claimant. Before appreciating the oral evidence of two eye witnesses (Manjibhai Ranchodbhai who was having his Pan shop near the place of accident and opponent no.1-Ibrahim Adam), it is necessary to consider the place of accident and the position of vehicles when the Panchnama, Exh.52 was prepared. The bus was lying in such a position that its right front wheel was at a distance of 20 feet away from the southern border of the road and motor cycle was lying at a distance of 2 feet away towards north from the right front wheel of bus and there were break marks of the length of one foot. The bus was proceeding from east to west and therefore, the Tribunal was justified in concluding that accident took place due to rash and negligent driving on the part of the bus driver. The Tribunal also did not accept the case of the bus driver that there were three bumps. It found that there was only one bump which the bus had already crossed and therefore, it is not possible for us to accept the submission being made on behalf of the S.T. Corporation that the motor cycle jumped after hitting the bump and

dashed against the bus. If it so, there was no question of the bus being found on the wrong side and the motor cycle dashing against the right front portion of the bus. Hence, the finding of the Tribunal that it was the bus driver who was responsible for the accident and that the motor cyclist was not responsible for the same cannot be faulted with.

6. Coming to the question of quantum of compensation, having gone through the judgment under appeal and having heard the learned counsel for the parties, we find no scope for reducing the amount of compensation. The deceased was running a garage and was also owning two trucks which were given out on hire to Sumul Dairy. The deceased had also constructed a residential building in the year 1974. In view of the material on record, the finding that the deceased was earning Rs.2,500/- per month cannot be said to be on the higher side. The only question which remains for consideration is whether the assessment of the income of the deceased by the Tribunal at Rs.2,500/- per month was on the lower side as contended on behalf of the

respondent-claimants in the cross objections.

7. Ms.Paurami Sheth, learned counsel for the claimants has vehemently submitted that as per the decisions of the Hon'ble Apex Court as well as this Court, the principle laid down is that for assessing compensation, for loss of dependency benefit, the Tribunal is required to take into account not only the current income of the deceased on the date of the accident but also the potential increase in income of the deceased. In support of the said submission, strong reliance has been placed on the decisions of the Hon'ble Apex Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and others, reported in AIR 1994 SC 1631, Sarla Dixit v. Balvant Yadav, reported in 1996 ACJ 581 and Lata Wadhwa v. State of Bihar reported in 2001 (8) SCC 197.

8. On the other hand Ms.Mayaben Desai, learned counsel for the S.T. Corporation has submitted that for the amount of compensation awarded by the Tribunal does not require any upward revision.

9. We may refer to the relevant decisions laying down the principles for assessment of compensation.

9.1 In the case of Susamma Thomas (supra), the Hon'ble Apex Court held as under:

> “In the present case the deceased was 39 years of age. His income was Rs.1,032/- per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs.1,032/- per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs.2,000/- as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal

living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents."

9.2 In Sarla Dixit v. Balwant Yadav 1996 ACJ 581 (584) on the point of computation of compensation, the Apex Court has observed as under (para 6):-

"Adopting the same scientific yardstick as laid down in (Susamma Thomas case), the computation of compensation in the present case can almost be subjected to a well settled mathematical formula. Deceased in the present case, as seen above, was earning gross salary of Rs.1,543/- per month. Rounding it up to figure of Rs.1,500/- and keeping in view all the future prospects which the deceased had in stable military service in the light of his brilliant academic record and performance in the military service spread over 7 years, and also keeping in view the other imponderables like accidental death while discharging military duties and the hazards of military service, it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death, i.e., up to Rs.3,000/- per month had he survived in life and had successfully completed his future military career till the time of superannuation. The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely, Rs.1,500/- per month to the maximum which he would have otherwise got had he not died a premature death, i.e., Rs.3,000/- per month and dividing that figure by two. Thus, the average gross monthly income spread over his entire future career, had it been available, would work out to Rs.4,500/- divided by 2, i.e., Rs.2,200/-. Rs.2,200/- per month would have been the gross monthly

average income available to the family of the deceased had he survived as a bread-winner."

9.3 In Lata Wadhva v. State of Bihar, reported in 2001 (8) SCC 197 (208-209), the Apex Court reiterated the following principles:

> "It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region, arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, "it is the overall picture that matters", and the court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed:
>
> > "The multiplier method is logically sound and legally well-established method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases."
>
> The Court further observed that the proper method of computation is the multiplier method and any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability in the assessment of compensation. The Court disapproved the contrary views taken by some of the High Courts and explained the earlier view of the Supreme Court on the point. After considering a series of English decisions, it was held that the multiplier method involves the ascertainment of the loss of dependency or

> the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be consumed up over the period for which the dependency is expected to last."
>
> "Damages are awarded on the basis of financial loss and the financial loss is assessed in the same way as prospective loss of earnings. The basic figure, instead of being the net earnings, is the net contribution to the support of the dependents, which would have been derived from the future income of the deceased. When the basic figure is fixed, then an estimate has to be made of the probable length of time for which the earnings or contribution would have continued and then a suitable multiple has to be determined (a number of year's purchase), which will reduce the total loss to its present value, taking into account the proved risks of rise or fall in the income."

10. Having gone through the various decisions, we find considerable substance in the submission made by the learned counsel for the claimants that for arriving at the amount of just compensation, the reasonable possibility of increase in the income of the deceased over a period of time is required to be taken into consideration. The deceased was

running an auto-mobile garage and had ownership of two trucks which were given out on hire to Sumul Dairy. The deceased was aged only 36 years at the time of accident and he had already constructed his residential building from his own income. Applying the principles laid down by the Hon'ble Apex Court in the aforesaid judgments to the aforesaid facts and circumstances of the case, we are of the view that the potential income of the deceased for the purpose of assessment of damages is required to be assessed at Rs.3,750/- per month (2500+ 50% increase). After deducting 1/3 amount as the expenses which the deceased would have incurred on himself, Rs.2,450/- was the dependency benefit which would have been available for the dependents of the deceased i.e. widow, four minor children and the parents of the deceased.

11. Considering the fact that the deceased was aged only 36 years on the date of the accident and was survived by his widow and minor children, the multiplier of 16 applied by the Tribunal was very much reasonable and applying the same multiplier, we arrive at the dependency benefit of

Rs.4,70,400/-. Adding thereto the conventional amounts of Rs.7,000/- which were reasonable at the time when the award was made by the Tribunal in the year 1984, we arrive at the compensation of Rs.4,77,400/-.

12. We accordingly hold that the claimants are entitled to get from the opponents in the claim petition a sum of Rs.4,77,400/- together with interest and costs. Deducting there-from the amount of Rs.3,70,000/- and interest and costs thereon, already awarded by the Tribunal, the balance amount of Rs.1,07,400/- together with interest at the rate of 7.5% from the date of filing the claim petition till the date of payment and proportionate costs shall be paid by the original opponents i.e. the Gujarat State Road Transport Corporation and its driver (opponent no.1 in the claim petition) within a period of two months from the date of a receipt of a certified copy of this judgment. Upon deposit of the amount, the Tribunal shall pass the appropriate orders regarding investment/disbursement after hearing the claimants.

13.In the result, the appeal is dismissed. The cross objections are partly allowed to the aforesaid extent.

(M.S.SHAH, J.)

(K.M.MEHTA, J.)

(ila)